IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

Crl.Rev.Pet.No. 762 of 1998()

SC.12/1996 of II ADDL. ASSISTANT SESSIONS COURT, THRISSUR DT. 17.12.1996
CRA.360/1996 of ADDL. SESSIONS COURT, THRISSUR DT.18.9.1998.

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REVN. PETITIONER: APPELLANT/ ACCUSED

K.BABU, S/O. CHANDRAN,
KIZHAKKEPEEDIKAYIL HOUSE,
KOTHUMBU COLONY, CHERUTHURUTHY
VILLAGE, TALAPPILLY TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM, REPRESENTING THE
C.I. OF POLICE, CHELAKKARA.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON 26/06/2007 PASSED THE FOLLOWING:

ORDER ON CRL.MP. NO.3900/1998 IN CRL.RP. NO.762/1998.

DISMISSED

26.06.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.NO.762 OF 1998

DATED THIS THE 26th JUNE 2007

ORDER

The revision petitioner stands convicted for the offence under Sections 376 and 506(1) I.P.C.and sentenced to undergo simple imprisonment for four years and to pay a compensation of Rs.15,000/- under Section 376 I.P.C. to the prosecutrix failing which he will undergo further simple imprisonment for one year and also to undergo simple imprisonment for one month for the offence under Section 506(i) I.P.C.

2. The prosecution case is that the accused during May 1994 intimidated PW1, a girl aged about 14 years at her house and committed rape on her against her will and without her consent. It is the defence version that the girl was working as a domestic servant in certain houses and the case has been foisted on him and that he had no physical contacts with the girl. The girl/PW1 gave birth to a child about one year and 8 months back. To trial. Doctors, Pws.5 to 7, of the Government Hospital, Wadakkencherry and Medical College Hospital, Thrissur who had

examined PW1, have deposed with respect to her pregnancy and delivery on 14-3-1995. PW9, the Headmistress of the Government High School, Cheruthuuthy has proved Ext.P7 age certificate of PW1 wherein she was a student in the VIth Standard. The date of birth as per Ext.P7 is 24-5-1980. PW10, the Secretary of the Grama Panchayat has also proved Ext.P8 birth certificate wherein the birth of the child is noted as 14-3-1995. The F.I.R. was recorded on 21-4-1995,i.e. Ext.P1(a). It is the version of PW1 that sometime in the month of Edavam in 1994 in the morning the accused with whom she was friendly came to her house and then she was working in the kitchen and nobody else was in the house and committed rape on her. After that incident also again after 2/3 days and also at another occasion he had sex with her by force. According to her, he had promised to marry her. It is the stead fast contention of the revision petitioner that the child born to her is not his child.

As per the order of this Court, the child was subjected to D.N.A. Finger printing test. As per the report submitted from the Laboratory, it is confirmed that the alleged father/accused is not

the biological father of the child. Counsel for the revision petitioner has relied on the decisions reported in **Kamti Devi v. Poshi Ram, (2001)5 SCC 311** and **Banarsi Dass v. Teeku Dutta, (2005)4 SCC 449** to fortify his contention that the DNA test has to be treated as conclusive. He has also relied on the decision in **Geetha v. State of Kerala, 2005(2)KLT 407** that the certificate of DNA test can be marked without the examination of the scientist concerned.

In the circumstances, the order of conviction and sentence imposed is set aside and the matter is remitted back to the appellate court and the appellate court shall permit both sides to adduce any further evidence if they so desire and dispose of the matter on merits. The accused shall appear before the court below on 30-7-2007. The Crl.revision petition is disposed of accordingly.

Sd/-

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.762 of 1998-B

ORDER

26-6--2007